The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page ii.

VOL. LXXV **Saturday, November 7, 1931.** No. 45

Current Topics.

Official Referees.

THE ANNOUNCEMENT of the approaching retirement of Sir EDWARD HANSELL as one of the Official Referees will have been heard by his many friends with much regret. To the performance of the duties of his office, duties which were for the most part irksome in the last degree, he brought a well-trained mind and a patience which materially lightened the work. Few, we imagine, envy the lot of the Official Referees, upon whom are devolved the most complicated accounts and inquiries. Those whose memories go back to the days when Baron POLLOCK, the last of the Barons, was on the bench, will remember his strong antipathy to cases involving accounts, and how he always tried to pass them on to the Official Referees. On one occasion, so runs the story, he was trying a case on a sultry afternoon, and for a moment he slumbered while counsel was opening the facts to the jury. Counsel was explaining why he was not calling a particular person who had been concerned in the transactions, the reason being that he had "gone to his long account." Those last words instantly woke up the Baron, who said: "Long account. Then I shall certainly refer this matter!" The Official Referees appear to have been instituted in 1873. Like most subordinate appointments in the law, the office has in most cases proved a *cul de sac* to the holder, the only instance of real promotion being the case of the late Mr. Justice RIDLEY, who was an Official Referee for a number of years.

Lawyers in the House of Commons.

DESPITE THE supposed popular prejudice against lawyers—a prejudice which, it may be remembered, found practical expression in 1404 when the King, acting upon an ordinance issued by EDWARD III in 1372, directed that no lawyers should be returned as members—there is no diminution in the number of members of the legal profession who have been elected to the new Parliament. An examination of the biographical notes appearing in the supplement to *The Times* last week, giving the figures and the results of the elections as then made known, showed that something like 120 members of the profession had been elected, that is, barristers and solicitors. Not all of these are in fact now practising members of the profession, but the statement is made as to each that he is a member of the bar or of the solicitor branch. The old prejudice against lawyer members was based upon the suggestion, actually made in one instance, that they abused their privileges as Members of Parliament by taking advantage of these privileges to promote the business of their clients; and JAMES I actually counselled constituencies to abstain from choosing lawyers, "who may seek reputation by stirring needless questions." Those days are long passed, and the supposed prejudice is now little more than a tradition with no basis in fact. In the House there is abundant scope for the exercise by the legal members of their professional knowledge, especially in the endeavour to make our statutes more lucid in their language, and in the discussion of questions in which an intimate knowledge of legal principles and the course of judicial decision is of value. As we have seen in many recent sessions, lawyer members have proved themselves of the greatest practical use.

A "One-Man" Parish Council.

ALL EFFORTS to constitute a proper statutory parish council at Foulness having failed, it has been announced that the Essex County Council have appointed the Rector as parish council, and that he is efficiently performing the duties of that body corporate. This may appear a novelty in the way of a corporation sole, but no doubt a beneficed clergyman would be competent to grapple with the duties of such an office. The legal position may perhaps be worth consideration, for, by the Local Government Act, 1894, s. 3 (1), the number of parish councillors must not exceed fifteen, nor fall short of five. The worthy incumbent therefore, with all his merits, has four heads too few. By s. 47 (5) of the Act, however, it is provided that if any parish council becomes unable to act by reason of a want of councillors, whether from failure to elect or otherwise, the county council may order a new election, and may by order make such provision as seems expedient for authorising any person to act temporarily in the place of the parish council. Under such an order, one may suppose, the rector is now, so to speak, the acting parish council, but the sub-section appears to contemplate an immediate election to regularise the position. It has of course been held under the Companies Acts that one man may constitute a meeting (see, for example, *East* v. *Bennett Brothers Ltd.* [1911] 1 Ch. 163). If persons eligible to serve as parish councillors of a particular parish unanimously refuse to be candidates for or accept the office, there appears to be no means of compulsion to require any of them to serve, and presumably election would have to be postponed until someone was willing. Compulsion to take office if nominated is rare in our law, though applying of course to sheriffs, who are liable to fine on refusal as in *R.* v. *Woodrow* (1788), 2 T.R. 731.

Dedication for Public Recreation a "Charitable Use."

THOSE (and their name is surely legion) to whom in their lower school days "*ignotum per ignotius*" was a bogey often tiresome, may be gratified to discover that the bogey does not confine his attentions to the "inky boy" pilloried by STALKY and Mr. KING, but makes bold to confront even judges of the High Court with his conundrums. Of such a one, which took the form of a clause in a will, did CLAUSON, J., in *In re Hadden; Public Trustee* v. *More* (*The Times*, 21st October), say nothing harder than that "the clause was awkwardly expressed." The clause directed the testator's trustees to hold his undisposed of residue "to be expended in some scheme or schemes to be

approved by my trustees for the benefit in the cities of Vancouver and if in the opinion of my trustees there is some equally deserving object of the nature hereinafter indicated of Nottingham or other places of the working people, such as playing fields parks gymnasiums or other plans which will give recreation to as many people as possible but as regards Vancouver I would not exclude some educational purpose being considered by my trustees." CLAUSON, J., having observed that the clause immediately preceding showed "that the testator was interested in the matter of popular healthy recreation," said that with the help of that clause he could classify the benefits which the testator authorised as being "benefits which supplied healthy recreation mainly in the open air and in particular by means of playing fields, parks, and gymnasiums," and he concluded that, as Pt. II of the Mortmain and Charitable Uses Act, 1888, relating to assurances to charitable uses, was precluded by s. 6 of the Act from applying to an assurance of a limited amount of land for the purposes of a park, garden, or other land dedicated to public recreation, it followed that the dedication of land to public recreation was dedication to a charitable use. The provision contained in the clause was not, therefore, within the rule against perpetui ies, and the learned judge was able to hold that the trust was a valid charitable trust. It is but one more among the myriad tributes paid by English judicial decisions to English law that a testator who cont ived to blend the obscurity of "Sordello" with the turgidity of "Piers Plowman" should none the less have succeeded in giving practical posthumous expression to the ideal of *mens sana in corpore sano*.

Wilful Neglect to Maintain.

Mil'ichamp v. *Millichamp* was a case in which a better report of the details than the non-legal press has furnished might be useful for the profession. It was an appeal by a husband to a Divisional Divorce Court from an order requiring him to pay weekly maintenance to his wife for her and her child. The marriage took place in June last year, and it was arranged that the couple should live with the husband's mother. After a few months, the wife left the house, complaining of her mother-in-law's treatment of her. She then made an application for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, as amended by the Act of 1925, in respect of her husband's wilful neglect to provide reasonable maintenance for her and the child. Presumably the defence was that it was her duty to return to the matrimonial home, and her place was open for her whenever she chose to do so. In *Jones* v. *Jones* (1929), 96 T.L.R. 33, MERRIVALE, P., laid down that, to justify such an order, the husband must have been guilty of such wilful neglect as amounted to misconduct. The misconduct must therefore here have been in suffering the wife to be bullied or ill-treated by the mother. There was no suggestion of physical assault by the mother, however, nor does it appear from the report that the husband could have prevented her from behaving as she did. If he could not have prevented her, it is difficult to see what misconduct he committed in failing to do so. If a husband, having reference to his employment in a crowded area, had only one choice of a home, in a house where there was a nagging landlady, a similar question might arise as to whether his wife would be justified in leaving him because she did not like the woman. If so, the observation must be made that his lot would be rather a hard one. In the case above, the mother was reported to have ordered the wife out of the house, but, if she had not physically attempted to enforce the order, the wife could have disobeyed it, and would have had no substantial grievance. If the mother had laid hands on the wife for the purpose of ejecting her from the house, no doubt the latter would have been justified in remaining out, but that does not appear to have been the case. One of the few privileges left to a husband is the choice of the matrimonial home, and a very intolerable state of things should certainly exist before a court held that the shelter of that home was not reasonable maintenance.

An Example of Futility.

HOWEVER MUCH we may condemn men and women who stir up trouble in our streets and involve themselves in collision with the police by refusing to conform to rules and regulations made in the interests of the public as a whole, we may spare a little pity for the bewildered helplessness they often show in their operations. A few weeks ago contingents of unemployed men marched, in orderly fashion, accompanied by police, to the Embankment. Their object was a demonstration before County Hall, the headquarters of the London County Council, in protest, it was said, against cuts in unemployment benefit. Now the Council, by its committees, might have something to do with a means test in connexion with benefit, but nothing whatever to do with the cuts determined upon by the Government. To make matters worse, the Council was not even in session and the building was in darkness. The unfortunate demonstrators, many of whom must have been footsore and weary, and for whom one could feel a genuine sympathy in their inevitable misfortune, could do no more than pass resolutions and utter slogans. A few came into conflict with the police, and by some means a police horse, against which no demonstrator could harbour a grievance, had one of its eyes badly injured. As a demonstration of futility the evening's proceedings would be hard to beat.

Claim in respect of Suicide.

A VERY curious action was recently before the Sheriff Court of Dumbartonshire, in Scotland—*Anderson* v. *M'Crae* (47 Scottish Law Review Reports, 287)—where damages were claimed for loss alleged to have arisen out of the suicide of a man in the house of the plaintiffs. It seems that the deceased took rooms in the plaintiffs' house, and committed suicide there during their absence. The claim for damages was brought against the deceased's executor and was based on two grounds (1) shock caused to the plaintiffs by finding the body of the deceased hanging in the hall of the house, and (2) breach of contract in respect of the rooms let to the deceased having been used for the unlawful purpose of committing suicide, whereby loss was caused to the plaintiffs. The claim was certainly a novel one, although one may sympathise with it. In an elaborate judgment the learned Sheriff discussed the legal position with great care, and arrived at the conclusion that the claim was not maintainable on either head. On the second head the sheriff said: "Can it be that the executory estate of a dead man is to be held liable in damages for all the injuries caused by shock or otherwise by his dead body because he killed himself? If he died naturally or was killed by another, it is inconceivable that any claim against his estate could be legally made through any injury arising from his dead body. I can see no difference in the case where he killed himself. Any legal claim against his estate on the ground of fault on his part can, in any case, only arise out of injury following in natural course from something wrongfully done by him to someone by some act before his death. Here the suicide is not averred to have caused shock to the plaintiffs through anything he did before his death . . . To sustain the relevancy of this action on the ground of the wrongdoing averred on record would be equivalent to affirming the proposition that the mere commission of suicide entails liability upon the suicide's estate for any injury or loss that can, however remotely, be historically traced to it as a *causa sine qua non*." On the other head of claim, the sheriff held that it was not established in fact, but while so holding he added that he was not to be taken as deciding that it was otherwise relevant to sustain the action. So far as we can recall, no attempt has ever been made in England to ground an action on the fact that damage has been caused to another by a person committing suicide.

Criminal Law and Practice.

PUNISHMENT.—A man was sentenced recently by a court of quarter sessions to imprisonment with hard labour for twelve calendar months, and the sentence was immediately criticised (*a*) because so bad a man should surely have been sent to penal servitude, and (*b*) because it was unjust to regard the fact that this was not his first conviction, and because, therefore, surely, three months' hard labour would have been adequate.

It is worth examining the case and attempting to indicate the elementary principles of the theory of punishment.

The crime was housebreaking. The offender led a younger man into it, got away with over £100 of stolen property, and subsequently mentioned to the police that he would not work so long as he could steal, and that he proposed returning at his earliest free moment to *rob* other houses of which he had taken note.

He expressed to the court a hope that the Prime Minister's appeal to the country for economy would be regarded in fixing the amount of his punishment.

He pleaded guilty, and it was proved that within three years he had been convicted and once bound over, once sentenced to four months and twice to six, for similar offences, and once to six months for assaulting police, together with one or two minor matters of less importance.

The object of punishment is to reform the offender and to deter others from doing the like. For murder there is one fixed penalty, but, generally speaking, for other offences there is wide discretion, from the purely nominal to a fixed maximum. In one case, at all events, a minimum is prescribed.

It is not proposed here to discuss the question of capital punishment. Suffice it to say that while hanging murderers may be an excellent example to others, it hardly fulfils the other condition by reforming the culprit.

Nor is it proposed here to discuss probation, which is a matter for consideration by itself; the theme of this paper is punishment in the literal sense of the word.

Our fathers had more severe ideas than we have, and what we regard as savage penalties were inflicted even upon first offenders. Possibly our ideas run overmuch in the opposite direction. At all events, it is not uncommon for offenders to claim as of right the immunity of a first offence, almost like pleading benefit of clergy.

A judge's most difficult and responsible task is probably so to balance the benefit and deserts of the prisoner with the question of the example to others and the protection and welfare of society, as to arrive at a just and adequate penalty. It must err, of course, if it does err, on the side of mercy.

Experience only will bring him to the perfection aimed at and it may probably be said with truth that while some will never be good judges, no one can be until he is old enough.

One of the most delicate problems is the proper application and weight of the prisoner's previous bad character. His good character, needless to say, may be drawn upon like a balance at the bank, when he is in need of it.

Prisoners sometimes say, when admitting a previous conviction, "I have been punished already for that," and plenty of people, other than prisoners, find a difficulty in understanding the justice of inquiring into previous records.

There is a distinction between punishing twice for the same thing and assessing a new liability in the light of whether it is the first time or a repetition.

If one repeats oneself after due warning, it must at least be asked whether the earlier warning has proved adequate.

The Court of Criminal Appeal has always insisted that punishment of old offenders is not to be a question of mathematical progression, that is to say, the court must not argue that because the last sentence was so much, the next must necessarily be so much more.

It is essential to inquire what interval without crime has occurred and what effort has been made to profit by the previous lesson.

Conversely, it is not possible to disregard altogether the fact that previous warnings have been ignored.

Next, it should be emphasised that crimes against the person are more serious than crimes against property, and that crimes against children, women, lunatics and animals are worse than against such as are less defenceless.

In assults upon the police a little extra emphasis must be laid upon the element of example to others.

In cases of dishonesty by postal officers and people in positions of trust, a higher standard is expected and a more serious view is traditionally taken of lapses from rectitude.

Especially in the case of sexual crime, pathological considerations come in question. In the most advanced civilisations it may become possible to treat these offenders in hospitals instead of prisons, but such civilisation has not yet been reached. If there is complete mental irresponsibility, medical treatment is accorded, but so long as there is some degree of responsibility there must be a corresponding liability. The responsibility and the liability will have, somehow, to be made to balance.

To sum up, it is possible to enunciate very broad principles for the theory of punishment. It is not possible to make definite rules of general application or to say with exactitude what must be the given penalty for a given crime. Only the most patient, anxious and thorough examination of all facts relevant to the crime and the criminal can produce a result to satisfy at once the requirements of justice and mercy.

It is, unfortunately, necessary to be stated, in conclusion, that a fine, equivalent to the total income for a week's rent and the maintenance of a family, is a very heavy penalty. To impose such a fine for a small larceny, for poaching a rabbit or for having a noisy silencer on a motor bicycle cannot, in any circumstances easily imagined, be either merciful or just.

The Kylsant Appeal.

THE dismissal by the Court of Criminal Appeal of Lord KYLSANT's appeal against his conviction and sentence at the Central Criminal Court, on the 30th July, was not, perhaps, unexpected by those who have followed the case from the beginning. Lord KYLSANT was convicted of knowingly making, circulating and publishing a false prospectus in connexion with an issue of £2,000,000 debenture stock in the Royal Mail Steam Packet Company, of which he was chairman, and he was sentenced to twelve months' imprisonment in the second division. The allegation of the Crown was that the prospectus was false in that it concealed from prospective investors—by omitting certain material information regarding the company's true financial position—exactly what the real position of the Royal Mail Company was at that date. A document was false, it was contended, if by stating some things and omitting others it created a false impression, or, if that which was stated created one impression whereas other facts, had they been added, would have completely removed the first impression. That, said the Attorney-General, was what had happened in this case, and had the full facts of the company's financial state been known—that it had made no trading profits whatever for several years and had been living on secret reserves—no sane person would have invested a penny piece in the company.

Such statements as the prospectus did actually contain, for example, that the average annual balance available for distribution during the last ten years had been more than sufficient to pay the interest on the present debenture issue more than five times over, were in fact absolutely true in themselves, but these balances were in general the direct result of what was termed the adjustment of taxation reserves and not of trading profits. Sir JOHN SIMON, K.C., who appeared for Lord KYLSANT, based a very plausible argument on the construction of s. 84 of the Larceny Act, 1861, the

section under which the indictment was framed. His contention was that s. 84 did not penalise what he called "economy of information": what it did punish, and with all the rigour of the criminal law, was an actual false statement of fact. No fact, he said, which was omitted from the prospectus would, if it had been included, have detracted from the truth of the statements which were in fact made, and Mr. Justice WRIGHT ought to have directed the jury that the section did not punish an omission unless that omission rendered false that which was stated.

When all is said and done, however, it is utterly impossible, in this admittedly extremely difficult case, to avoid the conclusion at which the Attorney-General invited the Court of Criminal Appeal to arrive, namely, that whereas the prospectus invited the investor to put up money in the belief that there was a reasonable prospect of getting a return, in truth and in fact the directors must have known the circumstances which made such a return very unlikely.

Mr. Justice AVORY, in giving the judgment of the court, referred to a number of authorities, which, he said, supported the view of the law expressed by Mr. Justice WRIGHT in his summing-up regarding the construction of s. 84 of the Larceny Act, 1861. In their opinion there was ample evidence upon which the jury could come to the conclusion that the prospectus was false in a material particular, in that it conveyed a false impression. The falsity consisted of putting before intending investors as material upon which they could exercise their judgment as to the existing position of the company, figures which apparently disclosed the existing position, but which, in fact, concealed it. In other words, the prospectus implied that the company was in a sound financial position, and that prudent investors could safely invest in its debentures. That implication arose partly from the statement in the prospectus that the dividends had been regularly paid over a period of years, a statement which was entirely misleading in view of the fact that they were paid, not out of current earnings, but out of earnings in the abnormal war period.

A further question was whether there was evidence on which the jury could properly find that Lord KYLSANT knew that the prospectus was false. If there was evidence that the document was false in the particulars already indicated, there was ample evidence on which the jury could find that the appellant knew of its falsity.

The jury, concluded his lordship, must be taken to have found that what was done in this case was done with intent to defraud. In the result the court had come, without hesitation, to the conclusion that in the summing-up, regarded as a whole, there was no misdirection, and that there was ample evidence upon which the verdict of the jury could be supported.

After the attention of their lordships had been drawn to certain mitigating facts, the court, however, found themselves unable to accede to the application that the sentence should be altered.

Conditions Indorsed on Tickets.

THE case of *Penton* v. *Southern Railway* [1931] 2 K.B. 103, provokes deliberation upon the principles of law to be applied where a railway company issues a ticket to a passenger subject to indorsed and/or incorporated conditions. In such circumstances, no one but a leisured individual would take the trouble to acquaint himself with the conditions, and the question necessarily arises as to how far a person unacquainted with the conditions is bound by them. The point has been enunciated in "Anson's Law of Contract" (16th ed.), at p. 25, as follows: "Where an offer consists of various terms, some of which do not appear on the face of it, to what extent is an acceptor bound by terms of which he was not aware?"

It is a fundamental principle of the law of contract that an offer is made when, and only when, it is communicated to the offeree. The principles which govern that class of case of which *Penton* v. *Southern Railway* is an example are, in reality, refinements of this proposition. There are, as might be imagined, circumstances in which an offer will be presumed to have been communicated, although the offeree is, in fact, ignorant of its terms. An illustration may be taken from the judgment of MELLISH, L.J., in the famous case of *Parker* v. *S. E. R. Co.* (1877), 2 C.P.D. 416. He said at p. 421: "Where an action is brought on a written agreement which is signed by the defendant, the agreement is proved by proving his signature, and, in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents." Or, to employ the words of Lord HALDANE in *Hood* v. *Anchor Line* [1918] A.C. 837, a case of the class under consideration: "If he (the passenger) had signed the contract, he certainly would not have been heard to say that he was not bound to look. The common sense of mankind which the law expresses here would not permit him to maintain such a position." By signing a contract, a person is presumed to have assented to, and, in the absence of fraud, is bound by, its terms.

Proof of assent is necessary in all cases, but where the document is unsigned by the offeree, proof of assent must be sought *aliunde*. "The parties may, however, reduce their contract into writing, so that the writing constitutes the sole evidence of the agreement, without signing it; but, in that case, there must be evidence independently of the agreement itself to prove that the defendant has assented to it. In that case . . . it is, in the absence of fraud, immaterial that the defendant had not read the agreement and did not know its contents": per MELLISH, L.J., in *Parker* v. *S. E. R. Co.*, at p. 421.

"So far as the law is concerned, a contract of carriage may be constituted by writing or by parol, or may be inferred from the acquiescence of the carrier in the presence of the passenger on the conveyance. Contracts of carriage are not usually made by parol, nor are they usually embodied in signed writings": per Lord DUNEDIN in *Hood* v. *Anchor Line*, at p. 846. They are, in fact, usually made by the delivery to the passenger of a ticket which may, and often does, contain indorsed or incorporated conditions. The question is: When does the law presume that the passenger has assented to such conditions?

In *Nunan* v. *Southern Railway Co.* [1923] 2 K.B. 703, SWIFT, J., at p. 707, expressed his view of the law, which was adopted by Lord HANWORTH, M.R., in *Thompson* v. *L. M. & S. Railway Co.* [1930] 1 K.B. 41, in this passage: "I am of opinion that the proper method of considering such a matter is to proceed upon the assumption that where a contract is made by delivery, by one of the contracting parties to the other, of a document in a common form stating the terms upon which the person delivering it will enter into the proposed contract, such a form constitutes the offer of the party who tenders it, and if the form is accepted without objection by the person to whom it is tendered, this person is as a general rule bound by its contents and his act amounts to an acceptance of the offer to him whether he reads the document or otherwise informs himself of its contents, or not, and the conditions contained in the document are binding upon him; but if there be an issue as to whether the document does contain the real intention of both parties, the person relying upon it must show either that the other party knew that there was writing which contained conditions or that the party delivering the form had done what was reasonably sufficient to give the other party notice of the conditions and that the person delivering the ticket was contracting on the terms of those conditions."

This passage summarises the law laid down in *Parker* v. *S. E. R. Co.*, and the cases which have followed it.

If a railway company can show that a passenger was aware of conditions indorsed on a ticket issued to him, the passenger will, of course, be bound by those conditions. A passage from the judgment of MELLISH, L.J., in *Parker* v. *S. E. R. Co.*, at p. 421, makes this perfectly clear. He said: "If in the course of making a contract one party delivers to another a paper containing writing, and the party receiving the paper *knows* that the paper contains conditions which the party delivering it intends to constitute the contract, I have no doubt that the party receiving the paper does, by receiving and keeping it, assent to the conditions contained in it, although he does not read them, and does not know what they are."

It will be realised that it may not be at all easy to establish that the passenger knew that the ticket contained conditions, and, in those circumstances, the company must prove that everything reasonably necessary to bring the conditions to the passenger's notice has been done. "Whether all that was reasonably necessary to give him this notice was done is, however, a question of fact, in answering which the tribunal must look at all the circumstances and the situation of the parties": per Lord HALDANE, in *Hood* v. *Anchor Line*, at p. 844.

An offer may be ostensibly complete on the face of it, in which case the offeree will not be bound by any other terms intended to be included. In *Henderson* v. *Stevenson* (1875), L.R. 2, H.L. Sc. 470, a ticket, having on its face the words "Dublin and Whitehaven," was given to a passenger, who, without looking at it, paid for it and went on board. He lost all his luggage on the journey, and, thereupon, brought an action against the company. The company's defence was that there appeared an intimation on the back of the ticket that they were not to be liable for losses of any kind or from any source. The judgment of Lord CAIRNS in the House of Lords is significant. After pointing out that there was nothing on the face of the ticket referring the passenger to the back and that nothing was said by the clerk who issued the ticket directing the passenger to what was on the other side, his Lordship continued: "It seems to me that it would be extremely dangerous, not merely with regard to contracts of this description, but with regard to all contracts, if it were to be held that a document complete on the face of it can be exhibited between two parties, and without any knowledge of anything beside, from the mere circumstances that upon the back of that document there is something else printed which has not actually been brought to and has not come to the notice of one of the parties, that contracting party is to be held to have assented to that which he has not seen, of which he knows nothing, and which is not in any way ostensibly connected with that which is printed or written upon the face of the contract presented to him."

On the other hand, in *Hood* v. *Anchor Line*, there was, on the face of the ticket, an indication that it contained conditions. As Lord HALDANE said at p. 845: "When he accepted a document that told him on its face that it contained conditions on which alone he would be permitted to make a long journey . . . and then proceeded on that journey, I think he must be treated according to the standards of ordinary life applicable to those who make arrangements under analogous circumstances and be held to be bound by the document as clearly as if he had signed it." In *Thompson* v. *L. M. & S. Railway Co.*, LAWRENCE, L.J., at p. 52, addressed himself, with reference to the peculiar facts of that case, to the question whether the company had taken steps reasonably necessary to bring indorsed and incorporated conditions to the notice of the passenger. He said: "On the ticket issued to the plaintiff's agent there was a statement in plain terms that it was issued subject to conditions which would be found on the back, and on the back there is a plain statement indicating where the conditions subject to which the ticket was issued were to be found. In these circumstances (the notice on the ticket not being tricky or illusory) it seems to me that there is no room for any evidence that the company had not done all that was reasonably necessary as a matter of ordinary practice to call attention to the conditions upon which the ticket was issued."

Two further points emerged from the judgment of Lord HANWORTH, M.R., in *Thompson* v. *L. M. & S. Railway Co.* First, the fact that a passenger is unable to read will not avail him, and, secondly, the mere circuity which has to be followed to find the actual condition does not prevent the passenger having notice that there was a condition.

When, therefore, an issue arises as to whether the document does contain the real intention of both parties, two questions of fact arise for the consideration of the tribunal: (1) Was the passenger aware that the document contained conditions? (2) Has the company done what was reasonably necessary to bring the conditions to the passenger's notice? Those are questions of fact for the jury; a question as to whether a finding on either or both of those questions can be supported on the evidence is a matter of law for the court.

It seems, however, that another question may very well arise. It will be remembered that SWIFT, J., when enunciating the principles involved in this class of case in *Nunan* v. *Southern Railway Co.*, spoke of making a contract "by the delivery . . . of a document in a *common form*." MELLISH, L.J., in *Parker* v. *S. E. R. Co.*, at p. 422, thought that there might be cases "where it would be quite reasonable that the party receiving it (the ticket) should assume that the writing contained no condition . . ." Again, Lord DUNEDIN, in *Hood* v. *Anchor Line*, at p. 846, said: "It is in each case a question of circumstance whether the sort of restriction that is expressed . . . is a thing that is usual, and whether, being usual, it has been fairly brought before the notice of the accepting party . . . How that question is to be answered depends not only on the circumstances of that particular case, but also on the circumstances of the class of cases of which it is one." A concrete example is taken by Lord HANWORTH, M.R., in *Thompson* v. *L. M. & S. Railway Co.*, at p. 49, where he said, referring to *Parker* v. *S. E. R. Co.*: "The contract (for the deposit of goods) was one which could be made, and might very ordinarily be made, without any written conditions of any sort or kind; and that feature is dwelt upon as significant in the judgment of Lord COLERIDGE, C.J., in the court below, where he says: 'Regard being had to the common and ordinary course of business, it seems to me to be reasonable that a man receiving such a ticket as this should look upon it as a mere voucher for the receipt of the package deposited, and a means of identifying him as owner when he sought to reclaim it, and in that sense not containing any special condition to which his attention was to be drawn.'"

It seems that circumstances might arise when it would be necessary for a tribunal to direct itself upon another question—the reasonableness of the condition—in addition to those indicated in *Parker's Case*. LAWRENCE, L.J., in *Thompson* v. *L. M. & S. Railway Co.*, stated definitely that "if there were a condition which was unreasonable to the knowledge of the company tendering the ticket I do not think the passenger would be bound." Further, SANKEY, L.J., at p. 56, said: "I would like to guard myself in the way that BRAMWELL, L.J., and my brother, LAWRENCE, L.J., have guarded themselves with regard to the question whether, if the document to which you are referring imposed such unreasonable conditions that nobody could contemplate that they exist, you could be bound by them. The example given was supposing you left in a cloak-room goods bound by conditions in a time-table, and there were conditions in it that if you did not remove your goods within twenty-four hours they should be forfeited or that you should pay £100 or some ridiculous condition like that, in my view the conditions would not be binding."

The judgments in *Thompson* v. *L. M. & S. Railway Co.* indicate that not only must reasonable steps be taken to give notice of indorsed or incorporated conditions, but that the conditions themselves must be reasonable. There is no indication how far courts are prepared to go along this line. It is to be noticed that, in *Hood* v. *Anchor Line*, Lord DUNEDIN used the word "usual" and not "reasonable." It may be that the term "usual" was intended as synonymous with "reasonable," though equally it may be that it was not.

Apart from this question, the principles involved in this class of case are, it is submitted, firmly established by the authorities referred to herein.

"Extradition Crime"

Committed "within the Territory" of the demanding State.

THE case of *Kossekechatko and Others* v. *The Attorney-General for Trinidad*, in which judgment was delivered by the Judicial Committee of the Privy Council on the 26th July last, reasons given on the 22nd October, is one of unusual human interest, ari ing as it did out of the escape of some convicts from the terrible penal settlement of French Guiana. It further shows how extremely laxly the law can be interpreted and administered within a British Crown Colony. But both those matters may be passed by to discuss a substantial point of law affecting English extradition practice.

Apart from the appellants' attack on the validity of the order made by the Colonial Court (it was adjudged to be "the wrong order made by the wrong person") two points were taken.

The contention was that none of the appellants had been proved to have been convicted of an extradition crime, and this contention consisted of two branches.

It was urged first, that it must be established by affirmative and sufficient evidence that the crime in respect of which extradition was sought, as described in the French version of the treaty, involved the commission of a crime listed in the Extradition Acts, 1870 and 1873. Their Lordships did not deal with this point, having regard to their views on other aspects of the case. But the matter is one of such grave importance in the law of extradition that we may be permitted here briefly to indicate how the law stands, without such further judicial pronouncement as it was hoped would have been given in the present case. We suggest that *Re Arton No. 2* [1896] 1 Q.B. 509, is sufficient authority for the proposition that the crime for which extradition is sought must, to be extraditable, be constituted by acts or omissions which, if they had occurred in England, would have constituted a crime according to English law, though the French crime and the English crime may be under different heads in the French and English versions. It is further to be remarked that the descriptions employed in the treaties are not used with particularity and precision. The treaties, as Lord RUSSELL said, in the case cited, have to receive a literal interpretation.

In respect to this point as to the constituents of the crime, let it be remarked that the Extradition Act, 1870, s. 10, draws no distinction between fugitive criminals *accused* of an extradition crime and fugitive criminals alleged to have been *convicted* of one, so that proof of the elements of the offence is required not only in the case of an accused, but also in that of a convicted person.

Foreign records of conviction usually recite all the facts found on which the conviction is based, and this enables the English magistrate to judge whether a crime according to English law is in question. In the case of *ex parte Moser* [1915] 2 K.B. 698, at p. 702, Lord READING, C.J., speaks of "the documents sent from France which we have seen." These documents contained an extract from the minutes of the registry of the Court of Appeal of Besançon. This extract recited the evidence. It seems clear that in the absence of a certificate of facts found, independent evidence of the facts on which the conviction was based must be put before the magistrate to whom the requisition for extradition is referred.

In a recent application by the Czecho-Slovakian Government for the extradition of a man for a crime described by that Government as "attempted larceny," the recital of the facts revealed that although the offence was so described the actual offence, according to English law, was larceny. Extradition was granted for larceny, although it could not have been granted for attempted larceny, which was the nearest English expression to translate the Czech word "krádez." What the Czecho-Slovakian law characterises as "krádez" (an expression correctly literally translated as "attempted larceny") includes far more than the English law regards as mere attempts.

Without a knowledge of the facts, the foreign description is useless.

In the *Trinidad Case* the committing magistrate appears to have had before him nothing but a description of the crime in the technical language of the French law, which by no means always has exact equivalents in English; see, *inter alia*, *Arton's Case*, where the expression under discussion was "faux."

The second branch of the contention as to absence of conviction for an extradition crime dealt with the question of territorial jurisdiction. The words used in the treaty are "crime committed in the territory of" the demanding State, and there must be something to show that the crime for which extradition is asked was committed "in the territory"—in this case the territory of the French Republic. Those most conversant with the law and practice of extradition had always considered that this was so, and the case of *R.* v. *Lavaudier* (1881), 15 Cox C.C. 329, was considerable authority that way. There, property had been stolen in Belgium, and the persons whom it was sought to extradite were proved to have associated with the person who brought the stolen property to London, before he did so, and afterwards they pledged the property in various pawnshops in London. The order for extradition was discharged by the High Court on the express ground that there was no evidence of an offence being committed by the accused in Belgium.

The point is now settled once for all, and it is so important, that we quote the relevant portion of the Judicial Committee's judgment, as it was delivered:—

> "Upon the true construction of the treaty their Lordships feel no doubt that Article I (which is the crucial Article) relates only to crimes committed within the territory of the Power which is seeking extradition. It was suggested by the Solicitor-General that the words 'in the territory' refer to the locality of the proceedings and conviction, and not to the locality of the commission of the crime. In support of this view he pointed to Article VII (B), which did not require that the warrant there mentioned should state the place where the crime was committed. The Supreme Court [of Trinidad] relied upon this fact as disposing of the point; but while appreciating the force of the argument, their Lordships feel unable to escape from the plain words of Article I, which, as a matter of grammar, clearly refer to convicted persons as persons 'who have been convicted of a crime committed in the territory of the one Party.' This view as to what might be termed the territoriality of the crime, is borne out, not only by the French version of Article I, but also, their Lordships think, by Articles IV and XII, and their references to crimes committed in the country or the territory of a Power which is seeking extradition. In their Lordships' opinion no one of the appellants was liable to be extradited under the treaty, unless the crime of which he was convicted was, in fact, committed within the territory of the French Republic.

"This being the case it next falls to be considered whether this essential fact was proved. It is admitted that no such proof was tendered in the case of any of the appellants. Nevertheless, it might have been unnecessary to do so, if it could have been shown that under French Law no conviction in France of any of the appellants would have been possible unless the crime of which he had been convicted had, in fact, been committed in French territory. Any doubt which might have existed upon this point has been removed at the hearing before this Board; for the affidavit of Monsieur FREDERICK ALLEMÉS [legal adviser to the French Embassy] makes it clear that, in the case of each appellant, his conviction in France did not necessarily involve that the crime of which he had been convicted had been committed in the territory of the French Republic.

"The omission to prove this essential fact (if it be the fact) is, in their Lordships' opinion, fatal to the validity of the order of the 6th November, 1930, even if in other respects it were beyond reproach."

Company Law and Practice.

CII.

(*Continued from p.* 737.)

LAST week in this column we were examining s. 5 of the Companies Act, 1929, and this week that examination may be continued with, perhaps, some degree of profit.

Section 5 (1) (*e*) provides that the memorandum may be altered so as to enable a company to "restrict or abandon any of the objects specified in the memorandum." This power applies both to the fundamental, and the non-fundamental, objects of a company, said EVE, J., in *Re Jewish Colonial Trust* (*Juedische Colonialbank*) *Ltd.* [1908] 2 Ch. 287, at p. 301. One might perhaps be tempted to wonder why it should ever be necessary to abandon any of the objects of the company, but at least one example of such a case is the case where the court permitted an abandonment of objects which were preventing a company from being registered in Portugal: *Re Loanda Gas Co.*, 41 SOL. J. 111.

Clauses (*f*) and (*g*), which deal with a sale of the undertaking and amalgamation respectively, are, as was stated last week, new. The reason for them would appear to be the fact that some doubts as to the extent of the powers of the court under clause (*a*) had arisen in Scotland. In England the powers authorised by these two clauses have been exercised by the court under clause (*a*); see *Re New Westminster Brewery Co.* (1911) W.N. 247, and *Re Marshall Sons & Co.* (1919) W.N. 207. But in Scotland, in *Re John Walker & Sons Ltd.* [1914] S.C. 280, the court would not allow an alteration of the objects to permit the sale of the whole undertaking, although it allowed an alteration which permitted the company to purchase another undertaking.

Section 5 (2) provides that the proposed alteration must be confirmed on petition by the court, and that until such confirmation the alterations shall not take effect. The application to the court must be by petition: R.S.C. O. LIIIB, r. 5 (*a*). The court to whom application must be made is "the court having jurisdiction to wind up the company" (s. 380). This court is in the case of companies registered in England the High Court, and the other courts having concurrent jurisdiction as provided by s. 163, and in the case of those registered in Scotland the courts as provided by s. 166. Order LIIIB, r. 2, further provides that the petition may be brought to either the office of the Chancery Registrar or to the Registrar's Companies (Winding Up) Office. Thus the petition can be presented to any judge in the Chancery Division. The doubt as to whether this course was permissible was dispelled by WARRINGTON, J., as he then was, in *Re Essex & Suffolk Equitable Insurance Society Ltd.* (1909) W.N. 102. There seems to be little to justify the retention of an alternative jurisdiction of this nature, and to the present writer it would appear convenient and logical were all this business to be assigned to the Companies Court.

The company must, after presenting the petition, take out the usual summons for directions. This is in order that the court may be satisfied, in accordance with sub-s. (3), that sufficient notice has been given to persons affected by the alteration. A person is not an affected person because by the alteration the company may carry on a new business which will harm his existing business. If the harm is caused by fraudulent means, the person will still have his remedy: *Re Hearts of Oak Life & General Assurance Co. Ltd. and Reduced* [1920] 1 Ch. 544. No notice in writing is usually directed to be given to debenture-holders or secured creditors unless this security is likely to be affected by the alteration. If any such security is affected, notice in writing of the alteration should be sent to each debenture-holder or secured creditor, and their answers should be exhibits to the affidavit in support of the petition. The order on the summons will direct in what papers and how long before the hearing of the petition it should be advertised. There is no need in the advertisement notice now to set out the resolution verbatim; *Re Atlantic Patent Fuel Co Ltd.* (1917) W.N. 214.

Section 5 (4) gives the court power to impose conditions as a term of confirming the alteration. The most usual condition is, as we saw last week, to insist on a change of name to prevent the name of the company becoming misleading: *Indian Mechanical Gold Extracting Co.* [1891] 3 Ch. 534. But the alteration of name is not the only condition the court may impose. KEKEWICH, J., in *Re National Boiler Insurance Co.* [1892] 1 Ch. 306, made it a further condition to the change of name that the new objects passed by the special resolution should not take effect until all the existing insurance policies had expired, or the holders had given their consent.

The usual method when the court imposes a condition is that the petition shall stand over with liberty to apply, and that when the condition has been fulfilled, as by passing a special resolution changing the name, the order will, on application to the judge, become effective. But an order in *Re Government Stock Investment Co.* (*No.* 2) [1892] 1 Ch. 597, was made on the company's undertaking to change its name within three months.

Sub-section (5) gives the court power to exercise a discretion by having regard to the rights and interests of various parties. This discretion, it was decided in *Re Jewish Colonial Trust* (*Juedische Colonialbank*) *Ltd.*, *supra*, must follow the same principles as those laid down for dealing with petitions to confirm the reduction of capital under ss. 55 and 57 of this Act. In the words of EVE, J., in the above case, at p. 300: "... I am not called upon in exercising my discretion to consider the wisdom of the proposed alteration ... I have to ask myself, is the alteration fair and equitable as between the two classes of shareholders?" Thus, if the alteration is unfair and inequitable, the court may exercise its discretion by refusing to make the order: see *Re North of England Protecting & Indemnity Association*, 45 T.L.R. 296.

The last two sub-sections of s. 5 deal with the practice as to filing of an order confirming an alteration of objects with the Registrar of Companies, and the penalties for default in so doing.

(*To be continued.*)

Mr. Frederick Thomas Seward Marsh, of Camberley, Surrey, clerk and solicitor to the Camberley U.D.C., died on 8th August, leaving £8,828, with net personalty £7,715. He gives: £500 to the Cancer Research Hospital, Fulham-road; £100 to the Yateley Cottage Hospital, Camberley; £100 to William James Gillespie, clerk.

A Conveyancer's Diary.

Appointment of New Trustees for the Purposes of the Statutory Trusts.

I must make a short reference to the opinions which I expressed in this Diary for 10th and 17th October with regard to appointments of new trustees, where, by virtue of the transitional provisions of the L.P.A., the property is held upon the statutory trusts and ceases to be held upon the trusts of the will or other instrument under which the property was, immediately before the commencement of that Act held, by or in trust for persons in undivided shares.

It will be remembered that I said that in such cases an appointment of a new trustee of the will or other instrument would be ineffective, as the trusts of the will or other instrument no longer applied to the land, which, under the transitional provisions, was held upon entirely new trusts, namely, the statutory trusts.

In our issue last week there was published a letter signed "Watling" putting two questions which I think that I ought to answer before leaving the subject.

The first question is: "Who would be the proper persons to appoint the new trustee where by the instrument a person is nominated for the purpose of appointing new trustees?"

My answer is that, if I am right, the person nominated is only empowered to appoint new trustees of the instrument; but the trusts of the instrument (so far as the land is concerned) have been superseded by the statutory trusts, and there is no power, in the person so nominated, to appoint new trustees for the purposes of those trusts. Therefore the appointment lies with the surviving or continuing trustees.

I am told that this defeats the intention of the testator or settlor (which it does) and is against common-sense (which it is)—but not more so than the decision in *Re Flint* [1927] 1 Ch. 570, and other decisions under the "New Property Acts"—and other acts, for the matter of that.

The next question is "Whether the vesting declaration should be express or implied"?

The controlling words of s. 40 of the T.A., 1925, are "where by deed a new trustee is appointed to perform any trust then . . . ." I see no reason why the provisions of that section should not apply to the appointment by deed of a new trustee for the purposes of the statutory trusts. The implied vesting declaration may therefore be relied on.

Conditions of Sale of Leaseholds.

Turning to another subject, I have been interested lately in the form of conditions of sale of leaseholds with regard to the question of how far the purchaser can be saddled with constructive notice of the covenants in the lease, which he has not, in fact, seen.

There is an interesting recent case on this point which will repay close consideration—*Charles Hunt, Limited* v. *Palmer* [1931] 2 Ch. 287.

The facts in that case were that leasehold shops which were described in the particulars of sale as "valuable business premises" and "leasehold business premises," comprising two spacious shops and a large ground floor factory, were advertised for sale by public auction, subject to special conditions of sale and to the National Conditions of Sale, which contained the following: No. 6. "The lease or underlease or a copy thereof may be examined at the office of the vendor's solicitors during office hours on the five working days preceding the day of sale, and the purchaser (whether or not he inspects the same) shall be deemed to have bought with full notice of the contents thereof."

The defendant, who carried on business as a dairyman, having for the first time become aware of the sale on the morning of the day on which the auction was to be held, applied to the auctioneers for particulars, and was supplied with the particulars of sale and the special conditions, which stated that the properties were sold subject to the National Conditions of Sale so far as the latter conditions were not inconsistent therewith. The defendant was not supplied with a copy of the National Conditions of Sale. The defendant viewed the property and afterwards bid at the auction and became the purchaser. The purchaser signed the usual memorandum of agreement endorsed on the particulars and special conditions and paid the deposit.

It appeared that the property was held under two leases, each of which contained a covenant on the part of the lessees not to carry on upon the premises without the previous consent in writing of the lessors "any other trade or business than that of a ladies' outfitter, fancy draper and manufacturer of ladies' clothing."

Neither before nor at the time of the sale was any information given to the defendant of the contents of the leases, nor was any opportunity given him to inspect them.

The plaintiffs appear to have endeavoured to obtain a licence from the lessors for the use of the premises for any kind of business, but failed to do so.

In these circumstances the defendant refused to complete and the plaintiffs brought an action for specific performance. The defendant pleaded misdescription and counter-claimed for rescission and a return of the deposit.

Clauson, J., gave judgment for the defendant on the claim, and in the exercise of the discretionary power conferred on the court by s. 49 of the L.P.A., 1925, declared that the defendant was entitled to give a valid receipt to the auctioneers for the deposit.

In the course of his judgment the learned judge pointed out that the property was put up for sale by auction as "the valuable business premises," and also as "valuable leasehold business premises," and held that it was in the first place incumbent upon the plaintiffs to show that the premises answered that description. Until they had done that it was irrelevant to consider the effect of the sixth condition of the National Conditions of Sale which was, of course, relied on by the plaintiffs as saddling the defendant with notice of the contents of the leases. His lordship said that "a shop which may only be used for one trade cannot fairly be described as 'valuable business premises.'" The defendant was not, in fact, offered what he contracted to purchase, and a court of equity would not, therefore, compel him to complete.

I think that this case is of practical value and shows that a vendor of leaseholds to be on the safe side should not only offer inspection of the lease before the auction but at the auction, and should disclose covenants restrictive of the user of the premises so that those who may decide to bid, even at the last moment, may not be able to say that they did not know and had no opportunity of ascertaining what the effect of the covenants was. It also points to the advisability of solicitors keeping a careful eye upon the natural tendency of auctioneers in preparing particulars of sale to use expressions which, although almost common form, and regarded as merely puffing verbiage, may provide a purchaser with a means of escape from his bargain.

Landlord and Tenant Notebook.

Fitness for Human Habitation.

The report of the case of *Fletcher* v. *Ilkeston Corporation* in *The Times* of 30th October last shows that disputes arising out of the requirement of fitness for human habitation, which may arise between owners of property and local authorities, may be gone into in a court of law and that questions of fact may be decided by that court. It is true that most of the disputes arising in daily life from the statutory duties imposed upon landlords are between the landlord and the sanitary inspector, but it is well settled that what is now s. 1 (1) of the Housing Act, 1925, creates a contractual obligation which can be enforced by

the tenant in an ordinary action. Before the undertaking to keep the premises in all respects fit for human habitation was added to the condition that they should be in that state at the commencement of the term, it was held that the word "condition" did not bear its technical meaning, but that an action for damages could be maintained for its breach: *Walker* v. *Hobbs & Co.* (1889), 23 Q.B.D. 458.

The exact extent of the obligation has not been very fully gone into in binding decisions. As to the nature of the question in the case mentioned, the landlords admitted that the ceilings, which had collapsed, had been in a ruinous and dangerous state when the house had been let, and the action of the county court judge in leaving it to the jury to say whether under those circumstances the duty had been fulfilled was approved. The question is therefore one of fact, but one in which some guidance as to the standard set could usefully be given.

No express covenant to keep premises fit for habitation has ever been adjudicated upon; possibly because no such covenant has ever been used. Among the older authorities, one can only seek assistance from cases in which the defence of no beneficial occupation has been put forward in answer to a claim for use and occupation, and cases illustrating the scope of the implied covenant of fitness for occupation in tenancies of furnished premises. *Edwards* v. *Etherington* (1825), Ry. & M. 268, is an example of the former class; Abbott, L.C.J., directing the jury as follows: "It is for you to say whether such serious reasons for quitting existed [the walls had become unsafe and the defendant had left without giving notice] as would exempt the defendant from this demand on the ground of his having had no beneficial use and occupation of these premises." The cases dealing with furnished lettings are nearer what is wanted, but the breaches alleged mostly relate to one common complaint, risk of infection. In *Collins* v. *Hopkins* [1923] 2 K.B. 617, at p. 620, McCardie, J., said: "What is the meaning of 'fitness for habitation'? The meaning of the phrase must vary with the circumstances to which it is applied." Earlier in his judgment, the learned judge observed that the warranty was one to be extended rather than restricted; and it seems reasonable to suppose that if unfurnished premises within the Housing Act limits were let in an infectious condition, it would be held that there was evidence that they were not in all respects reasonably fit for human habitation.

In *Stanton* v. *Southwick* [1920] 2 K.B. 642, the facts were somewhat unusual. Rats had commenced to overrun the place soon after it had been let. After a year, the official rat-catcher was called in and put an end to the trouble. The county court judge found that the landlord's agent knew of the state of affairs before the letting, but he also found that the rats came from an old drain under the house and under adjoining premises. He gave judgment for the tenant. On appeal it was argued that the landlord was no more responsible than if a neighbouring factory had destroyed amenities by emitting fumes. *Carstairs* v. *Taylor* (1871), L.R. 6 Ex. 217 (the well-known case of the rat gnawing a hole in a water pipe) was cited. The Divisional Court held that in the absence of evidence that the rats had infested the house in the sense that they bred there, that they were part of the house, and had their home in the drain below, there was no evidence of unfitness. It is perhaps a pity that the point was not taken that the drain below the house was part of the parcels (though someone else may have had a wayleave), so that any rat bred and born there might have claimed the demised premises as his domicil of origin. Attention must, however, be paid to the words "letting for habitation" in the sub-section; but also to the present sub-s. (3), by which dwelling-house includes part of a dwelling-house.

The standard was discussed in *Jones* v. *Geen* [1925] 1 K.B. 659, but its definition left to the county court judge, to whom the matter was remitted. The dispute concerned an increase of rent of controlled premises. The landlord had imposed the usual 25 per cent.; the tenant relied on a covenant by himself to keep and leave the premises in good and tenantable repair. The landlord thereupon invoked the restriction on contracting out. The Divisional Court held that there was a marked difference between the two obligations in point of extent, and the county court should fix the percentage accordingly. The standard required by the Housing Act was described by Salter, J., as "a humble standard," only requiring that the place must be decently fit for human beings to live in.

Next, *Fisher* v. *Walters* [1926] 2 K.B. 315, concerned, as regards the breach complained of, the collapse of a ceiling. On this, Finlay, J., remarked "Was this house during the whole term kept by the landlord reasonably fit for human habitation? The ceiling fell down. *Res ipsa loquitur.*"

As regards law, the above decision was virtually overruled by *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131, C.A., decided on the ground that notice of the defect is a condition precedent to liability, as in the case of an ordinary landlord's covenant. But the question of fact, whether a defective window-sash could constitute a breach of the obligation, was commented upon *obiter*, and the matters taken into consideration by three lords justices will provide ample material for argument should such a dispute arise again. The tenant had been injured when opening the window, the sash having given way, and the panes having broken in consequence. The view taken by Lord Hanworth, M.R., was that there was some antagonism between "reasonably" and "in all respects" (which both qualify "fit for human habitation"); that though a dwelling must have windows and windows which will open this was one of those accidents which must happen. Atkin, L.J., went into the question at great length. Conceding that the breaking of one or two cords would not normally make a house unfit for habitation, he thought that in the particular circumstances, and having regard to the class of the house, a different conclusion should be drawn. The number of rooms and of windows per room was relevant. He approved a suggested test: whether the state of repair is such that by ordinary user damage may naturally be caused to the occupier, in respect of injury to life, limb or health. Lawrence, L.J., was disinclined to embark upon a discussion of the point, but desired to express his emphatic opinion that the defective cord did not render the house in any respect unfit for habitation in the ordinary acceptance of the expression, but merely less comfortable; and he considered the opposite view fantastic.

Our County Court Letter.

LIABILITY FOR WORKMAN'S EYE INJURY.

In *Day* v. *Richard Garrett & Sons, Ltd.*, recently heard at Saxmundham County Court, the respondents were agricultural engineers, who had employed the applicant as a universal miller. This work involved the use of vernier gauges and micrometers (necessitating accuracy to one thousandth of an inch), but the applicant (1) had lost the sight of his right eye in July, 1930, (2) was then totally incapacitated until November, 1930, and again from April, 1931, to July, 1931, (3) was now subject to headaches (which were not relieved by spectacles for stigmatism), and (4) having become slow at the above work, had accepted employment as a driller with the respondents. The medical evidence for the respondents was that the left eye was certified as fit for work in November, 1930, and (1) there was no apparent cause for the subsequent headaches, (2) as the spectacles were no relief, the inference was that there was no ophthalmic cause, but the difficulty was due to the loss of thirty degrees of the field of vision caused by the projection of the nose, (3) a sufficient range of vision nevertheless remained, as much fine work always had

to be done with one eye. It was pointed out for the applicant, however, that setting the gauge and doing the work were vastly different, and that a great strain was imposed by the sudden substitution of one eye for two. His Honour Judge Hildersley, K.C., held that the applicant's sight had been permanently impaired, as the headaches prevented him from doing fine and close work as well as before. An award was therefore made for compensation at the rate of 7s. 6d. a week. The decisions with regard to injuries to eyes have been recently reviewed by the House of Lords in *Birch Brothers* v. *Brown* [1931] A.C. 605.

LIABILITY FOR ANIMAL'S FATAL FRIGHT.

In *Bowen* v. *Williams*, recently heard at Kington County Court, the claim was for £14 as damages for negligence, which had caused the death of the plaintiff's cow. The latter had been lying upon a hill, over which the plaintiff had grazing rights, when the defendant galloped past on horseback within a yard of the cow, which was startled and fell upon her back, with her horns stuck in the ground. In attempting to rise, the cow kicked and struggled and broke a blood vessel, and died soon afterwards from hæmorrhage, according to the evidence of a veterinary surgeon. The defendant's case was that (1) it was impossible to gallop so close to a recumbent cow, as the horse would have shied, (2) he had not approached nearer than 10 yards and had passed the cow at a walking pace, (3) the cow was already writhing (in some kind of fit) before he arrived. His Honour Deputy Judge Pritchett held that the cow was startled by the proximity of the pony, and that the defendant had been negligent. Judgment was, therefore, given for the plaintiff for £9 2s. and costs. It is to be noted that liability for fright or nervous shock (without actual physical impact) had already been established with regard to human beings in *Hambrook* v. *Stokes Brothers* [1925], 1 K.B. 141, but the above extension (to the case of animals) appears to be a novel application of the principle.

PERSONAL INJURIES FROM DANGERS UNDERFOOT.

In *Barge* v. *Clement's Cafe*, recently heard at Liverpool County Court, the claim was for damages for personal injuries, due to falling down the stairs in a café at Mold. The plaintiff was a widow, aged seventy-eight, and had sustained an injury to the left arm (causing a permanent loss of grip in the hand), her case being that (*a*) the stairs were not sufficiently lighted, (*b*) the linoleum was slippery, (*c*) the bannister rail was not of uniform height, and it came to a premature end (at a bend in the stairs), thus causing the plaintiff to fall. The manageress stated that (1) during her seven years in the café there had been no previous accident, or complaint about the lighting, (2) even if the plaintiff had never been up the stairs before, her granddaughters should have warned her. Cross-examined as to the necessity for such a warning, the manageress admitted that she always took her own mother up at bedtime, but only on account of her infirmity. The jury found for the plaintiff, with damages £80 16s., and His Honour Judge Dowdall, K.C., gave judgment accordingly, with costs. See the "County Court Letter" under the above title in our issue of the 8th March, 1930 (74 Sol. J. 151), dealing with the position under the Workmen's Compensation Acts.

In *Boast* v. *Blaydes*, recently heard at Hull County Court, the claim was for £100 as damages for negligence, the plaintiff's case being that (*a*) the yard of the defendant's hotel was inadequately lighted; (*b*) the cellar door was inadequately secured, and the plaintiff therefore fell through. The defendant denied negligence and contended that he owed no duty to the plaintiff. His Honour Judge Beazley (in a reserved judgment) held that the sign of the women's lavatory (to which the plaintiff had been directed) was lighted from the verandah, and that the path was also safe. Judgment was therefore given for the defendant, with costs. See *Chapman* v. *Rothwell* (1858), E.B. & E. 168.

Books Received.

The Annual Practice, 1932. Being a collection of the Statutes, Orders and Rules relating to the General Practice, Procedure and Jurisdiction of the Supreme Court, with Notes, etc., by W. Valentine Ball, a Master of the Supreme Court, and F. C. Watmough, Barrister-at-law, assisted by Philip Clark, head clerk of the Action Department, and T. Hyde Hills, of Chancery Chambers. 1931. Demy 8vo. pp. ccccxxxix and 2593, and (Index) 430. London: Sweet and Maxwell Limited; Stevens & Sons Limited. £2 net.

Jones' Book of Practice Forms for use in Solicitors' Offices. Volume I. Containing over 400 Forms and Precedents in the King's Bench Division of the High Court of Justice and the County Court, including 100 Forms of Special Indorsements of Writs, 100 Forms of County Court Particulars, Forms under the Arbitration Act and the Bills of Sale Acts, etc. With Dissertation, Notes and References by Charles Jones, author of "The Solicitors' Clerk" (Parts I and II), "Jones' Book of Practical Forms," in three volumes, and "Jones' County Court Guide." Fourth Edition. Revised and enlarged by J. Rhys Williams, editor of "Jones' County Court Guide." 1931. Crown 8vo. pp. xi and (with Index) 576. London: Effingham Wilson. 12s. 6d. net.

Northcliffe: The Facts. By Louise Owen. 1930. Medium 8vo. pp. (with Appendix) 333. London: 22 Buckingham Gate, S.W.1. 5s. net.

The Law of Banking and Stock Exchange Transactions. By Heber Hart, K.C., LL.D., late British Member of the Mixed Arbitral Tribunals; Recorder of Ipswich. Fourth edition. In two volumes. Medium 8vo. Volume I, pp. cxxii and 636; Volume II, pp. 637 to 1265 (with Index). London: Stevens & Sons Limited. £3 3s. net.

Elements of the Law of Contract. By W. G. W. Cook, LL.D. (Lond.), Barrister-at-law. Assisted by John W. Baggally M.A. (Oxon), Barrister-at-law. 1931. Crown 8vo. pp. xxvii, 203 and (Index) 35. London: Butterworth and Co. (Publishers) Limited. 5s. net.

Shirley's Selection of Leading Cases in the Common Law. With Notes. Eleventh Edition. By H. Bates Thompson, M.A. (Oxon), Barrister-at-law. 1931. Medium 8vo. pp. lxxiv and (with Index) 720. London: Stevens & Sons Limited. 25s. net.

The Student's Chart of Bankruptcy and Deed of Arrangement. By G. H. Johnson, A.S.A.A., and John A. Edwards, A.C.A. pp. 23 and Index. London: Gee & Son (Publishers) Ltd. 5s. net.

Club Accounts and their Control. By Harold Tansley Witt, F.C.A. 1931. Large crown 8vo. 96 pp. London: Gee & Son (Publishers) Ltd. 5s. net.

The Conveyancer. No. 191. October, 1931. A monthly Review devoted to matters connected with Conveyancing and Commercial and Mercantile Documents. London: Sweet & Maxwell Limited. 3s. net.

The Promotion and Accounts of a Private Limited Company, by Sir Mark Webster Jenkinson, K.B.E., F.C.A. Third Edition revised by A. C. Hooper. 1921. Crown 8vo. pp. 110 (with Index). London: Gee & Co. (Publishers) Ltd. 6s. 6d. net.

Land Tax Valuation. Being Pt. III of the Finance Act, 1931, and the Provisions relating to Mineral Rights Duty, contained in the Finance (1909–10) Act, 1910, with Introduction and Explanatory Notes. David Bowen, Barrister-at-Law. 1931. Demy 8vo. pp. lvi and (with Appendices and Index) 284. London: Estates Gazette, Ltd; Sweet & Maxwell, Ltd. 18s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Fee Simple SUBJECT TO AN ANNUAL SUM PAYABLE TO THE POOR OF A PARISH—CHARGE OF SUM ON OTHER LAND BY WAY OF INDEMNITY—SALE—TITLE.

Q. 2327. Clients of ours between the years 1887 and 1890 purchased several pieces of land free from incumbrances, except as to a certain annual sum of £7 payable to the poor of a certain parish in Devonshire which was charged upon the whole of an estate, of which these pieces of land formerly formed part and which sum was many years ago charged by arrangement solely upon a portion of the said estate sold to W.A. Several houses have been built on the above-mentioned pieces of land and have been sold to different purchasers, and these houses frequently change hands in this district. Under the S.L.A., 1925, has the above land become settled land, or is it within the exemption of the Amending Act, 1926? In the latter case it is assumed that the owner can sell without any reference to the S.L.A. The case of *In re Ryder and Steadman's Contract* [1927] 2 C.D., p. 62, seems to be in point.

A. We are not informed how the estate became subject to the annual sum, but it is probable that it did not become so charged under the terms of any settlement. If the sum did not become payable under a settlement no question of the application of the S.L.A., 1925, can now arise (S.L.A., 1925, s. 20 (1) (ix)). If, on the other hand, the annual sum did arise out of a settlement, then, although the land is settled land, yet by virtue of L.P. (Amend.) A., 1926, s. 1, the owner can convey as if the land was not technically settled land.

Return of Income Tax CLAIMED BY WIFE EXECUTRIX IN RESPECT OF JOINT INCOMES.

Q. 2328. Mrs. A is the sole executrix and beneficiary under the will of her husband, B, who died in 1930. For five years prior to his death B held an investment of £1,000, upon which interest was paid half-yearly, tax being first deducted at the standard rate. During the whole of the same period Mrs. A held a similar investment. Mrs. A has now made a five years' re-claim of income tax in respect of both her late husband's holding and her own. The Estate Duty Office claims that the refund of income tax, both in respect of Mrs. A's holding and B's holding during his lifetime, must be brought into account and estate duty paid thereon, despite the fact that part of the return is to Mrs. A of tax deducted from a security which has always been held by her in her own right. Apparently it is argued that the income of Mrs. A fell to be included with that of her late husband up to the date of death, and she must pay estate duty on a return of income tax, which, in fact, belonged to her. Is there any method of avoiding this position, which operates very harshly in this case, as it affects the rate of aggregation for the whole of the estate?

A. We believe the Estate Duty Department is only following what has hitherto been the universal practice, but at the same time we express the opinion that the claim is probably incorrect. The case of *Leitch* v. *Emmott* [1929] 98 L.J. Q.B. 673; 14 Tax Cases 633, shows that the charge for tax on a married woman's income is a charge imposed on her (r. 16, General Rules), and that the proviso as to charging the husband is a proviso for the purposes of collection only. Under r. 17, as amended, a wife may before 9th July in any year of assessment claim to be assessed separately, and in that case the Commissioners have to apportion the liability and amount repayable (if any). The giving or omission to give such a notice could hardly alter the *property* in the money returnable. It is considered that for the purpose of ascertaining the amount due to the husband's estate, the proper course is to apportion the tax for each year according to the total of the husband's income and the total of the wife's income for that year, precisely as if a notice had been given under General Rule 17. It is suggested that this view should be put to the Department, and that they should be asked to take the opinion of the law officers, bearing in mind the decision in *Leitch* v. *Emmott*.

Will—DEVISE TO WIFE SUBJECT TO HER REMAINING A WIDOW.

Q. 2329. A, the testator, died in 1910, and devised and bequeathed all his real and personal estate to his wife B, subject to her remaining a widow, but in case of her re-marrying the said estate was divided between his son C, and his daughter D, in equal shares. B, the widow does not re-marry and dies in 1931. C, the son, predeceases his mother, the testator's widow, and by his will gave everything to his wife absolutely: (1) Was B, the testator's widow, a tenant for life? (2) As B did not re-marry it is assumed that at the date of her death the property vested in her personal representatives absolutely and beneficially. (3) If B was tenant for life, then it is assumed that the land was vested in the personal representatives in accordance with *Bridgett and Hayes*. (4) As B, the testator's widow, died intestate, it is assumed that a moiety of her property passes to her daughter, but the other moiety will have to be held under the Administration of Estates Act, 1925, upon the statutory trusts, that is to say, such moiety would be for the issue of the deceased son and would not pass under his will. This point is material as the widow of the deceased son is under the impression that she will receive her husband's share.

A. A condition in restraint of second marriage is good. It may have been that the testator thought he was giving a life estate defeasible on re-marriage, but (subject to the caution as to the inadvisability of attempting to construe a will without the whole document to refer to) the opinion is given that a devise in the terms stated gave B an absolute interest defeasible only on re-marriage. The answers to the questions are therefore: (1) No. (2) Yes. (3) If contrary to the above the opinion B was tenant for life the land would vest as suggested. (4) On B's intestacy (assuming her to have had only the two children) the beneficial interest in her estate will pass to D, if C had no issue. If he had issue, such issue will take half *per stirpes*. If B was only a life tenant, then of course C's half share passes under his will or intestacy. If C's representatives claim that B was a tenant for life, it would be advisable to go to the court on originating summons.

Sale by Grantee OF ADMINISTRATION AS ATTORNEY FOR USE AND BENEFIT.

Q. 2330. X, by his will and codicils, appointed Y and Z to be his executors, and recently died. Letters of administration (with will and codicils annexed) have since been granted "to A.B. the lawful attorney of the said executors for their use and benefit until they shall apply for and obtain probate of the said will and codicils." A.B. has agreed to sell as

personal representative certain of the deceased's real estate. Should Y and Z convey or join in the conveyance to the purchaser, inasmuch as the grant of administration is expressed to be made "for their use and benefit"?

A. Any person having a grant of administration has the same rights as if he were executor "subject to the limitations contained in the grant": A. of E.A., 1925, s. 21. The powers of the grantee in the present instance will be revoked only by the death of the principals or by a grant made to the latter or the survivor. A purchaser from him will get a good title providing he has proof that the principals are alive and that no grant of administration superseding the attorney's has been made at the date of conveyance (search should be made at the last moment). Without proof that the principals are alive, the title could not be forced on the purchaser in the absence of express stipulation: *Webb* v. *Kirby*, 26 L.J. Eq. 108. It does not appear to have been decided whether the death of one of the executors has any effect on the attorney's powers, but on principle it is considered it would not.

Licensing (Consolidation) Act, 1910, s. 57—No jurisdiction to hear further Application.

Q. 2331. Application was made by the local licensed victuallers association for a special order of exemption under s. 57 of the Licensing (Consolidation) Act, 1910, for extension of hours on a special occasion. Opposition was offered on behalf of a local body and the application was refused. The licensed victuallers proposed to renew their application at the next sitting of the borough bench. Will it be correct to submit that there is no jurisdiction to hear a further application, as under s. 57 the magistrates' discretion appears to be absolute and without appeal: *Devine* v. *Keeling* (1886), 50 J.P. 551; 34 W.R. 718, and making a fresh application appears in effect to be appealing from one bench to another?

A. The case cited is not quite in point. The court there held that it could not interfere with the exercise of the justices' discretion, not that an authority could not alter its own decision. But, on general principles, it would seem that an application once refused cannot be renewed to the same authority differently constituted. That would, in effect, be an appeal, and no appeal is contemplated by the Act. Even if a second bench hear the application, it would be an improper exercise of discretion to over-ride the decision of other members of their own body. Any case gone into on its merits, and adjudicated upon, is subject to the application of the principle of *res judicata*.

In Lighter Vein.

The Week's Anniversary.

Chief Baron Richards died at the age of seventy-one on the 11th November, 1823, and was buried in the Inner Temple. A sound lawyer but not a brilliant man, his professional progress was slow, and it was only nine years before his death that he was raised to the Bench of the Court of Exchequer. The only fault to be found in his judicial performance there was an unnatural asperity of manner which his fear of appearing partial to one side or the other led him to assume. In private, however, he was the most amiable of men. During the illness of his friend Lord Eldon in 1819, he deputised for him as Speaker of the House of Lords.

Encore.

An accident claim against the L.G.O.C. in the Clerkenwell County Court is to be tried for the third time. On the first occasion the jury assessed the price of an amputated arm at £250 and on the second at £500. This time there will be no jury. The result of the second trial is reminiscent of a case in which the late Mr. Justice Alpers of New Zealand was counsel. A jury had awarded his client £100 damages against a railway company for personal injuries, but the judge on his own initiative set the verdict aside on the ground that the sum was excessive, much to the indignation of Alpers. The second trial came on before a particularly strong-minded jury who, being aware of the foregoing circumstances, resolved to teach the bench a lesson by awarding no less than before. As they could not, however, remember the precise figure of the previous verdict they made a guess at £200. After they announced their finding, Alpers remained seated. "Don't you move for judgment?" asked the judge. "No, if your honour pleases, I am waiting." "What for, pray?" "In the hope that your honour may set aside the verdict so that I may double it once more."

Oriental Romance.

The Judicial Committee of the Privy Council has recently been called on to adjudicate upon the validity of a marriage between a Hindu Maharaja and an Australian lady. Not once or twice have matrimonial ventures in the east led to Westminster or the vicinity of Temple Bar. One of the most unfortunate instances was the luckless romance of Mr. Lamartine, an important Civil Servant in Ceylon and a bold champion of native rights. Having been unhappy in marriage, he sought and obtained a divorce in the Court of Ceylon. The decision was, however, reversed by the Privy Council for want of jurisdiction. Here was a hard blow, for he was by this time head over heels in love with a charming young lady. But devotion found out a way. If Christianity permitted a man to marry only one wife at a time, the Sons of the Prophet had a more liberal allowance. So, amidst wild rejoicings, the friend of the natives and his bride were duly received into the Mohammedan faith. This desperate step cost the devout lover his post and led to a painful finale in England when his wife (No. 1) seized the opportunity of obtaining a judicial separation and Kekewich, J., handed her over £5,371 10s. which she had brought to her husband plus interest and costs. In epilogue it may be added that the romantic convert was subsequently called to the Bar where his fearless ingenuity and his popularity in India were probably a great help to him.

Uncommon Prudence.

At Croydon Quarter Sessions recently a prisoner told the court that he had once been arrested, on leaving prison, for a burglary committed the week before his release. There is a better story than that, though, about a man who was tried for an offence and found guilty by an intelligent jury. When asked according to form whether he had anything to say why sentence should not be passed on him, he remarked that he was in gaol at the time of the crime. On examination this was found to be so. In answer to the judge's question as to why he had not spoken up before and saved the time of the court he replied shrewdly that he was afraid his previous conviction might prejudice the jury.

Correspondence.

Finance (No. 2) Act, 1931.

Sir,—Referring to the letter under the above heading appearing in the current issue of The Solicitors' Journal, the correct wording in the Fourth Schedule to that Act should have been "wherever they occur in the Finance Act, 1927, s. 40 (2), as amended by the Finance Act, 1930, s. 10."

Taking into consideration the amendment as set out in s. 10 of the Finance Act, 1930, it would appear clear that the rate relief now in force is "one half of the standard rate on £175."

16, Bedford-row, W.C.1. Winter & Co.

2nd November.

[Note.—We have also received a similar communication from Messrs. Tyer & Tyer, and are obliged to both our correspondents.—Ed. *Sol. J.*]

Notes of Cases.

House of Lords.

Connor *v.* **Cadzow Coal Co.** 19th October.

WORKMEN'S COMPENSATION—MINERS' NYSTAGMUS—PARTIAL OR COMPLETE RECOVERY—SUSCEPTIBILITY TO THE DISEASE.

This was an appeal from the Second Division of the Court of Session in Scotland.

The appellant, a miner, was on 14th February, 1928, disabled by miners' nystagmus while in the employment of the respondents, who paid compensation on the footing of total incapacity. On two separate occasions the appellant was certified to be fit for work on the surface and was paid compensation on the footing of partial incapacity. On 25th September, 1929, he was certified to have recovered and to be fit for ordinary work. Thereupon the respondents ceased to pay compensation and lodged a minute asking the arbitrator to end the compensation as from that date. In reply the appellant lodged a minute in which he made averments which he sought to have remitted to probation. The arbitrator allowed a proof, and the questions of law were: Was he entitled to do so or was he bound to end the compensation as at 25th September, 1929? The Second Division answered the first question in the negative and the second in the affirmative. From that decision this appeal was brought.

Lord BUCKMASTER, in delivering judgment, said if a man had once been attacked by the disease and had completely recovered recurrence of the disease would be due to his original susceptibility, but if the recovery were not complete there was the added probability of a recurrence owing to the fact that the original conditions caused by the first attack had not completely passed away. In the present case the Court of Session regarded the report of the medical referee as establishing a case of complete recovery, but it appeared to their lordships that the certificate did not necessarily bear that meaning. It stated that the man had recovered, but it did not state that the attack itself had not rendered him liable to a recurrence of the disease. The matter was therefore referred to the arbitrator with a direction to obtain from the medical referee an answer to the question whether he intended to certify that the man had completely recovered in the sense that he was not after the attack more susceptible to the disease than he had been before it. In his lordship's judgment complete recovery had not been established, and he thought the arbitrator was right in his refusal to end the compensation as on 25th September, 1928.

Lords DUNEDIN, WARRINGTON, THANKERTON and RUSSELL concurred.

COUNSEL: *Sir Matthew Fraser*, K.C., and *D. P. Blades*; *John Carmont*, K.C., *James R. Marshall* and *H. W. Beveridge*.

SOLICITORS: *Boxall & Boxall*, for *John & Francis Cassells*, Hamilton, and *Erskine Dods & Rhind*, Edinburgh; *Beveridge and Co.*, for *W. T. Craig*, Glasgow, and *W. & J. Burness*, W.S., Edinburgh.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Orpen *v.* **New Empire, Ltd., and Others.**

Rowlatt, J. 19th October.

COSTS—ACTION MADE VOID BY PASSING OF STATUTE—COSTS IN DISCRETION OF COURT—PLAINTIFF'S COSTS ALLOWED TO DATE OF STATUTE.

An action was brought by Millie Orpen, by writ issued on the 10th December, 1930, against the New Empire, Limited, and the directors of that company, claiming penalties for breach of the Sunday Observance Act, 1781. On 7th October 1931, Parliament passed an Act, which received the Royal assent on that day, legalising the Sunday opening of cinematograph theatres for a year, and thereby making the plaintiff's action void except so far as discretion was left in the judge to make an order as to costs. The plaintiff's action against the directors had been discontinued before the Act of 1931 was passed. Counsel for the plaintiff submitted that as his lordship could not try the case, he should give the costs as if he had tried it. The plaintiff would have succeeded but for the Act of Parliament. Counsel for the defendants submitted that, there being no possible judgment against the company, the order should be that the defendants should have their costs.

ROWLATT, J., said that the result of the new legislation was to put an end to an action which might or might not have succeeded, but which was in proper form and proceeded, save for the necessity of proof. In those circumstances he would have thought that the order should be that the action should be discharged and the plaintiff be given her costs. The proper order was that, the action having been discharged by statute, and it being left to the judge whether any order should be made as to costs, the plaintiff would have her costs from the company down to the 7th October, including the costs of the present application, and she must pay the directors their costs.

COUNSEL: *Charles Doughty*, K.C., and *H. G. Garland*, for the plaintiff; *St. John Field*, for the defendants.

SOLICITORS: *Jacques, Asquith & Jacques*; *H. S. Wright and Webb*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Guilfoyle *v.* **Port of London Authority.**

Humphreys, J. 23rd October.

ACCIDENT—NON-REPAIR OF DOCK SWING BRIDGE—PUBLIC RIGHT OF WAY—STATUTORY DUTY TO REPAIR—DOCK AUTHORITY'S LIABILITY FOR ACCIDENT.

In this action John Guilfoyle claimed damages against the Port of London Authority for personal injuries sustained by him when he tripped over a large nail projecting from the footway when walking over the Connaught Road swing bridge. The defendants were under a statutory duty imposed by s. 378 of the Port of London Authority Act, 1920, to maintain the bridge in repair. A common jury had found that the plaintiff's injuries were due to a non-feasance by the defendants inasmuch as they had allowed the roadway of the bridge to fall into disrepair. They assessed the damages at £153, and the plaintiff now asked for judgment for that sum. It was admitted that the public had an unrestricted right to use the bridge, subject to its being swung open from time to time for the passage of ships. The defendants contended that the bridge was part of a highway because it had been substituted by them for part of a pre-existing road they had cut away while constructing the dock, and that, being a statutory authority charged with the maintenance of the bridge, they were in the same position as a highway authority and no action lay against them for a non-feasance. The plaintiff contended that before the construction of the bridge there was no road over the land in question and therefore the bridge was not a highway.

HUMPHREYS, J., said that he had formed no opinion whether there was formerly a public highway over the place where the bridge now stood. It was to be observed that the defendants were not strictly comparable to an ordinary highway authority, who were unable to make any profit from their undertaking; the defendants were permitted to and did in fact impose tolls for the use of the docks. Also the swing bridge was not in any ordinary sense a highway at all; it was certainly not a public highway, and had never been dedicated to the public. Part of the bridge was used to carry a railway and the defendants would undoubtedly have been liable for damage caused by

non-repair of that part. He thought that they were equally liable in respect of the roadway, and there would be judgment for the plaintiff for the amount assessed by the jury.

COUNSEL: *Martin O'Connor*, for the plaintiff; *F. Wishart*, for the defendants.

SOLICITORS: *J. Nixon Watts & Co.*; *J. D. Ritchie.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In the Estate of Freeman (deceased).

Langton, J. 23rd September.

PROBATE—EXECUTORS SUBSTITUTED IN SUCCESSION—INTERMEDDLING BY ONE OF EXECUTORS NAMED—GRANT TO SUCCEEDING EXECUTOR NOTWITHSTANDING—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 160.

This was a motion for a grant of probate in the following circumstances. F, who was domiciled in New York, died in England on 1st June, 1931, leaving property in this country and in the United States. He left a will and codicil, dated 6th February, 1920, and 26th May, 1925, respectively, under which his two children, both under age, were interested. The estate was believed to be insolvent, the assets and liabilities in England alone being estimated at about £39,700 and £114,300 respectively. The will appointed L, an American citizen, and a New York Bank as executors, but the codicil directed: "In event a vacancy occurs in the office of the individual executor and trustee, whether from death, resignation, refusals to serve, inability to act or otherwise I appoint F.T.K. and H.A.M. to fill such vacancy and to succeed each other in the order in which they are named . . . I direct that no executor or trustee shall be required to furnish any bond or security whatever." The bank and F.T.K. renounced probate in New York and refused to prove in England. L, who was a close friend of the deceased, soon after his death came to England and intermeddled in the estate to the extent of selling some horses and other effects and paying the servants' wages. He returned to New York, renounced probate there and refused to prove in England. On 30th April, 1931, H.A.M. obtained letters testamentary in New York, and proceeded to apply in England for a grant of probate, but the vacation registrar held that he was precluded by the Probate Rules from making a grant to H.A.M., inasmuch as there was an executor who had intermeddled who could not therefore be allowed to renounce.

In moving before the vacation judge for a grant, counsel submitted that even if the very small part taken by L, in trying to assist legally, constituted intermeddling, it was quite impracticable to compel him to continue to act. Section 160 of the Supreme Court of Judicature (Consolidation) Act, 1925, did not apply, as it was not a question of administration with the will annexed. There was nothing to prevent the court from taking the practical course of granting probate to H.A.M., as a single and substituted executor, as provided by the will. Authority for that course was to be found in *In the Goods of Betts* (1861), 302 J.P. 167.

LANGTON, J., in making the grant, as prayed, said that the resignation of L enabled the court to make a grant to H.A.M. in his place. There was nothing discreditable in L's refusal to act.

COUNSEL: *Clifford Mortimer*, for the applicant; *G. P. Slade*, for an interested party.

SOLICITORS: *Nicholson, Graham & Jones*; *Slaughter and May.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Mr. JAMES RANKIN, solicitor, has been appointed Clerk to the Petty Sessions Districts of Coleraine and Garvagh, County Londonderry. He must reside within one and a half miles of the Coleraine Courthouse.

Societies.

The Law Society.

PRELIMINARY EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on the 14th and 15th October, 1931:—

Alfred Hector Backler, John Bailey, Charles James Bowes, Cave Bradford, Denzil John Atyeo Briggs, Arthur Cobby, Harry Stafford Cooke, David Sylvan Davies, Herbert Gordon Davies, James Henry De la Rue, Ronald Ewart Dodd, Basil Horace Emms, Thomas Burton Flewitt, Richard Allan Foster, Grenville Howard Francis, Ernest Laurie Gardner, Philip Alexander Hamilton, Frank Harland, Donald Wagstaffe Hay, John Gerald Eckersley Hope, Alfred William Hounsome, Sydney Solomon Jacobs, Frank Beverley Jewson, Adam Kenneth Ralph Johnstone, Alfred Ernest Jones, Thomas Jones, Frederick Douglas Kennedy, William Sheppard Kenyon, Andrew William Letts, Richard Anthony Little, Leslie Ernest Ludford, Robert McLean, Mervyn Louis Mass, Llewellyn Jarret Nicholas, Ernest John Pickworth, William Joseph Potts, Robert William Powell, Ronald Ewart Ratcliff, Charles William Ridpath, Percival Francis Rodwell, Herbert Priestley Rushton, William Ewart Sadler, Henry Alfred Sargant, Thomas Brook Seldon, George Ernest Collett Smith, Laurence Arthur Smith, John Dobson St. Goar Stutfield, Albert Edward Swales, Frank Symons, Fred Tadman, William Edward Tanner, Thomas William Tapping, Walter Edward Tindall, Herbert Turner, John Chivers Walker, Charles Smythe Tinling Widdrington, Mildred Wiener, Kenneth Berkeley Wills, Thomas Neville Wood, Robert Andrew Wotherspoon.

No. of Candidates, 119. Passed, 60.

Middle Temple.

THE HARMSWORTH LAW SCHOLARSHIPS.

The following members of the Middle Temple have been elected to Harmsworth Law Scholarships of £200 per annum, tenable for three years:—

Mr. J. F. Milward (Bedales School, Petersfield, and Clare College, Cambridge).

Mr. A. G. de Montmorency (Westminster School and Peterhouse, Cambridge).

Mr. Jasper More (Eton College and King's College, Cambridge).

Mr. J. L. S. Hale (Charterhouse School and Balliol College, Oxford).

Mr. E. D. Lewis (Harrow School and Magdalen College, Oxford).

Mr. A. B. Miller (Rugby School and Wadham College, Oxford).

Mr. P. H. T. Rogers (Westminster School and Balliol College, Oxford).

Mr. D. Walker Smith (Rossall School and Christ Church, Oxford).

Mr. G. M. Wilson (Manchester Grammar School and Oriel College, Oxford).

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, 3rd November, 1931 (Chairman, Mr. J. C. Christian Edwards), the subject for debate was: "That this House welcomes the result of the General Election."

Sir John Lithiby, C.B., opened in the affirmative; Mr. R. S. W. Pollard opened in the negative. The following members also spoke: Messrs. L. F. Sturge, E. F. Iwi, Barry O'Brien, Miss H. M. Cross, W. M. Pleadwell, A. L. Ungoed Thomas, J. H. O'Reilly, T. M. Jessup, J. L. Lewis, H. J. Baxter and R. W. Rye.

The motion was carried by six votes. There were thirty-three members and three visitors present.

United Law Society and Gray's Inn Debating Society.

JOINT DEBATE.

A joint debate was held between the United Law Society and the Gray's Inn Debating Society last Monday evening, 1st November, at 8.15, in the Middle Temple Common Room. Mr. George Bull was in the chair.

Mr. Graham Mould moved: "That in the opinion of this House the British are a nation of hypocrites." Mr. L. F. Stemp opposed. Mr. T. F. Southall seconded the motion and Mr. James Macmillan spoke fourth.

There also spoke: Messrs. Jones, Townby Millers, Palmer-Wood-Smith, Shannon, Beturl, Williams, Bell, Wood and Wentworth Pritchard.

Mr. Graham Mould having replied, there voted for the motion fourteen, and against, fourteen. The deciding vote therefore rested with the chairman, who voted for the motion.

The motion was, therefore, carried by one vote.

Rules and Orders.

THE BANKRUPTCY RULES, 1931, DATED OCTOBER 16, 1931, MADE UNDER SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, C. 59).

1. The following Rule shall be inserted in the Bankruptcy Rules, 1915,(*) after Rule 323A and shall stand as Rule 323B:—

"323B. For the purposes of section 41 of the Act a notice that a petition has been presented or a receiving order made shall be in writing, and shall be addressed, where the execution is in respect of a judgment of the High Court, to the Sheriff, and in any other case, to the officer charged with the execution, and may be served by being delivered by hand or by registered post, in the case of a notice to a Sheriff, at the office of the Under-Sheriff, and in any other case, at the office of the officer charged with the execution:

Provided that where a petition or receiving order is presented or made in a County Court the Registrar of which is also the High Bailiff of that Court, the filing of the petition or the making of the receiving order shall, for the purposes of that section, be sufficient notice to him in his capacity as High Bailiff of that Court, that the petition has been presented or the receiving order made, as the case may be."

2. These Rules may be cited as the Bankruptcy Rules, 1931, and shall come into operation on the 1st day of November, 1931, and the Bankruptcy Rules, 1915, as amended, shall have effect as further amended by these Rules.

Dated the 16th day of October, 1931.

Sankey, C.

I concur.

P. Cunliffe-Lister,
President of the Board of Trade.

S R & O. 1914 (No. 1824) I, p. 41.

Legal Notes and News.

Honours and Appointments.

Mr. CHARLES CYRIL GERAHTY, barrister-at-law, Attorney-General of Trinidad and Tobago, has been appointed one of His Majesty's Counsel for that Colony.

Mr. WILLIAM JAMES GILCHRIST, barrister-at-law, Puisne Judge, British Guiana, has been appointed First Puisne Judge of Trinidad and Tobago.

In recognition of his recent book "The Battle of Brunanburh and its period," Mr. J. H. COCKBURN, O.B.E., solicitor, Rotherham, has been elected a Fellow of the Royal Historical Society.

Mr. H. CROOK has been appointed Deputy Clerk to the Witham Urban District Council.

Mr. DENNIS J. HANNON, solicitor, Athlone, has been appointed legal adviser to the Westmeath County Council in succession to the late Mr. E. E. Mason.

Mr. JOHN S. BUDGE, solicitor, Towcester, has been appointed Clerk to the Towcester Rural District Council. Mr. Budge also holds the appointments of Clerk to Braddon Town Charities and Deputy Coroner for the West District of the County of Northampton. He was admitted in 1922.

Mr. F. D. V. CANT, solicitor, Dudley, has been appointed an Assistant Solicitor on the staff of the Town Clerk of that county borough (Mr. G. C. V. Cant).

Mr. EDWARD PARRY EVANS, Assistant Solicitor to the Bebington and Bromborough Urban District Council, has been recommended for a similar position in the department of the Town Clerk of the Royal Borough of Kensington.

Mr. STANLEY PAGE has been appointed Clerk to the Harlismere Rural District Council in succession to the late Mr. Harold Warnes.

Mr. D. COTES PREEDY, K.C., has been re-elected Chairman of the Worcestershire Association.

At a recent meeting of the Faculty of Solicitors of Inverness-shire, held in Inverness, Mr. D. F. MACDONALD was unanimously re-elected Dean of Faculty.

Professional Announcements.

(2s. per line.)

MESSRS. BOOTE, EDGAR & RYLANDS, solicitors, have removed their offices from 20, Booth-street, to 53, Spring-gardens, Manchester. Their telephone numbers will remain as at present 6293 and 6294 Central.

Professional Partnerships Dissolved.

CHARLES HAROLD NOEL ADAMS and FREDERICK JOSHUA BRUNSKILL, solicitors, Lewes and Crowborough, and 44, Bedford-row, London, W.C.1 (Hunt, Nicholson, Adams & Co.), dissolved as from 9th September, 1931.

ROBERT TREVOR GRIFFITHS and WILLIAM ERNEST OSWALD RUTTER, solicitors, Hay and Talgarth, in the County of Brecon (Griffiths & Rutter), dissolved by mutual consent as and from 14th October, 1931. R. T. Griffiths will continue to carry on the business.

THOMAS HENRY CLARKE, GEORGE HODGSON and JOHN HODGSON, solicitors, 2, Lune-street, Preston (Clarke & Son), dissolved by mutual consent as and from 30th September, 1931, so far as regards T. H. Clarke, who retires from the firm. G. Hodgson and J. Hodgson will continue the business.

"FOLLEY."

In a case at Essex Assizes a policeman said: I followed him down a folley.

The Judge (Sir Thomas Horridge): What is a folley?

Policeman: A footpath with a hedge on either side.

The Judge: A new word to me.

CHASE NATIONAL EXECUTORS AND TRUSTEES CORPORATION.

The Chase National Executors and Trustees Corporation Limited, London, announces that Mr. Roland R. Riggs, formerly with the Trust Department of the Chase National Bank of the City of New York, New York, has been appointed a director and manager of the Corporation.

JUDGE ON THE CIRCUIT SYSTEM.

Comments on the working of the circuit system were made by Mr. Justice MacKinnon when addressing the Grand Jury at Northamptonshire Assizes recently. The calendar contained only the names of three persons, two of whom had pleaded "Guilty" at the Petty Sessions.

Mr. Justice MacKinnon said that this illustrated the extreme difficulty of working the circuit system in any reasonable manner. By strange contrast he had the promise when he got to Leicester of perhaps a strenuous ten days, as there was an enormous amount of work to do. Provisions had been made for improving the working of the circuit system, but in his view they had not adopted the obviously proper course. There was the provision that if seven days before the holding of the assize there was no work at all in prospect the judge of assize might cancel that assize altogether. That did not assist very much in the administration of justice. The real difficulty about the system was not so much in the circuit but in regard to London. If one cancelled assizes it was not always practicable to get back to London to sit on a case, perhaps for one day, and then adjourn it possibly for weeks.

Another effort was made by Parliament a year or two ago to provide the amalgamation of assizes if it appeared there was little work at one or two places. But that, it seemed to him, did not act in the most practical way. Such a step was to be decided not by the judge of assize, but by the Lord Chief Justice, with the consent of the Lord Chancellor. It was only shortly before the holding of the assizes that it could be known how much work there was, and the Lord Chief Justice could not be apprised of the state of business all over the country. It was impracticable.

His lordship added that he became aware that the work of Northampton was practically negligible recently, and had it been competent upon him, it would have been easy for him to have made an order to combine the Northampton Assizes with those of Bedford, where there were only four or five cases, and all the prisoners pleaded "Guilty."

NEW CRIMINAL PROCEDURE IN ITALY.

The first Assize Court trial to be held in Rome under the new code of criminal procedure was begun recently, when a man named Bertozzi was accused of having murdered his wife. A table for the Press had taken the place of the jury-box, and the judicial bench was extended on either side of the presiding judge's chair so as to accommodate the Councillor-Reporter and the Assessors who now sit instead of a jury. Of the five Assessors one is a Cavaliere, one is a Podestà, one is a professor, and two are colonels. Preliminary speeches of praise of the new procedure were delivered.

AMALGAMATION OF JOINT STOCK COMPANIES.

Mr. Bertram B. Benas, barrister-at-law, recently delivered a lecture on the "Amalgamation of Joint Stock Companies," before the Liverpool District Centre of the Incorporated Secretaries Association. Mr. H. Newton Lowe, Deputy Director of Education for Liverpool, presided.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT No. I.	GROUP I. MR. JUSTICE EVE. Witness, Part I.	MR. JUSTICE MAUGHAM. Non-Witness.
M'nd'y Nov. 9	Mr. More	Mr. Jones	Mr. Jones	Mr. Blaker
Tuesday .. 10	Hicks Beach	Ritchie	*Hicks Beach	Jones
Wednesday 11	Andrews	Blaker	Blaker	Hicks Beach
Thursday . 12	Jones	More	*Jones	Blaker
Friday .. 13	Ritchie	Hicks Beach	Hicks Beach	Jones
Saturday .. 14	Blaker	Andrews	Blaker	Hicks Beach

DATE	GROUP I. MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	GROUP II. MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
M'nd'y Nov. 9	Mr. *Hicks Beach	Mr. Andrews	Mr. *Ritchie	Mr. *More
Tuesday .. 10	*Blaker	More	*Andrews	Ritchie
Wednesday 11	*Jones	Ritchie	*More	*Andrews
Thursday . 12	Hicks Beach	Andrews	Ritchie	More
Friday .. 13	*Blaker	More	Andrews	*Ritchie
Saturday .. 14	Jones	Ritchie	More	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 19th November, 1931.

	Middle Price 4 Nov. 1931.	Flat Interest Yield.			Approximate Yield with redemption		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	86	4	13	0	—		
Consols 2½%	56	4	9	3	—		
War Loan 5% 1929-47	97xd	5	3	1	—		
War Loan 4½% 1925-45	96xd	4	13	9	4	17	9
Funding 4% Loan 1960-90	87	4	12	0	4	13	0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	93	4	6	0	4	7	10
Conversion 5% Loan 1944-64	100	5	0	0	5	0	0
Conversion 4½% Loan 1940-44	96	4	13	9	4	18	0
Conversion 3½% Loan 1961	75	4	13	4	—		
Local Loans 3% Stock 1912 or after	62½	4	16	0	—		
Bank Stock	246	4	17	7	—		
India 4½% 1950-55	73½	6	2	5	—		
India 3½%	52½	6	13	4	—		
India 3%	45½	6	11	10	—		
Sudan 4½% 1939-73	94½	4	15	3	4	16	0
Sudan 4% 1974	85½	4	13	7	4	16	0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	82½	3	12	9	4	5	0
Colonial Securities.							
Canada 3% 1938	86½	3	9	4	5	6	9
Cape of Good Hope 4% 1916-36	92½	4	6	6	5	15	0
Cape of Good Hope 3½% 1929-49	80½	4	6	11	5	3	8
Ceylon 5% 1960-70	98	5	2	0	5	2	3
Commonwealth of Australia 5% 1945-75	76½xd	6	10	9	6	13	6
Gold Coast 4½% 1956	92	4	17	10	5	1	0
Jamaica 4½% 1941-71	91½	4	18	4	5	0	0
Natal 4% 1937	92½	4	18	4	5	0	0
New South Wales 4½% 1935-1945	63½	7	1	9	7	19	6
New South Wales 5% 1945-65	70½xd	7	1	10	7	5	0
New Zealand 4½% 1945	86½	5	4	0	6	0	3
New Zealand 5% 1946	94½	5	5	10	5	11	6
Nigeria 5% 1950-60	97½	5	2	7	5	3	6
Queensland 5% 1940-60	70½	7	1	10	7	7	3
South Africa 5% 1945-75	100	5	0	0	5	0	0
South Australia 5% 1945-75	72½	6	17	11	7	0	0
Tasmania 5% 1945-75	67	7	9	3	7	12	6
Victoria 5% 1945-75	70½	7	1	10	7	5	0
West Australia 5% 1945-75	75½	6	16	1	6	19	6
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.							
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	14	6	—		
Birmingham 5% 1946-56	100	5	0	0	5	0	0
Cardiff 5% 1945-65	100	5	0	0	5	0	0
Croydon 3% 1940-60	68½	4	7	7	5	2	6
Hastings 5% 1947-67	100	5	0	0	5	0	0
Hull 3½% 1925-55	82½	4	4	10	4	14	6
Liverpool 3½% Redeemable by agreement with holders or by purchase	72½	4	16	7	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	54xd	4	12	7	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	64½xd	4	13	0	—		
Metropolitan Water Board 3% "A" 1963-2003	63½	4	14	6	—		
Do. do. 3% "B" 1934-2003	65	4	12	4	—		
Middlesex C.C. 3½% 1927-47	85½	4	1	10	4	16	0
Newcastle 3½% Irredeemable	72	4	17	3	—		
Nottingham 3% Irredeemable	63	4	15	3	—		
Stockton 5% 1946-66	100	5	0	0	5	0	0
Wolverhampton 5% 1946-56	100	5	0	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	82½	4	17	0	—		
Gt. Western Railway 5% Rent Charge	94½	5	5	10	—		
Gt. Western Rly. 5% Preference	79½	6	5	9	—		
L. & N.E. Rly. 4% Debenture	72½	5	10	4	—		
L. & N.E. Rly. 4% 1st Guaranteed	66½	6	0	4	—		
L. & N.E. Rly. 4% 1st Preference	52	7	13	10	—		
L. Mid. & Scot. Rly. 4% Debenture	75	5	6	8	—		
L. Mid. & Scot. Rly. 4% Guaranteed	68	5	17	8	—		
L. Mid. & Scot. Rly. 4% Preference	52	7	13	10	—		
Southern Railway 4% Debenture	76	5	5	3	—		
Southern Railway 5% Guaranteed	91½	5	9	3	—		
Southern Railway 5% Preference	74½	6	14	3	—		